

IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA

**DAVID E. HORA and RYAN J.
SCHULTIS,**

Plaintiffs,

vs.

**SPRING MEADOWS PARTNERSHIP
and RODNEY SALL,**

Defendants.

Case No. CI01-79

ORDER ON MOTIONS

DATE OF HEARING: October 4, 2002.

DATE OF RENDITION: January 15, 2003.

DATE OF ENTRY: See court clerk's file-stamp date.

APPEARANCES:

For plaintiffs: George G. Vinton without plaintiffs.

For defendants: P. Stephen Potter with defendant Sall.

SUBJECT OF ORDER: (1) plaintiffs' motion in limine filed on September 10, 2002; (2) plaintiffs' motion for summary judgment filed on September 10, 2002; and, (3) defendants' motion for summary judgment filed on September 13, 2002.

PROCEEDINGS: See journal entry rendered contemporaneously with hearing.

FINDINGS: The court finds and concludes that:

1. The plaintiffs seek an order preventing the defendants from offering evidence at trial relating to the weight and number of bales of hay that the defendants had for the years of 1999 and 2000.

2. As the Nebraska Supreme Court explained in *State v. Davlin*, 263 Neb. 283, 639 N.W.2d 631 (2002), a motion in limine is but a procedural step to prevent prejudicial evidence from reaching the jury; it is not the office of such a motion to obtain a final ruling

upon the ultimate admissibility of the evidence; rather, its office is to prevent the proponent of potentially prejudicial matter from displaying it to the jury, making statements about it before the jury, or presenting the matter to the jury in any manner until the trial court has ruled upon its admissibility in the context of the trial itself.

3. Although the evidence of defendants regarding weight and number of bales may be weak, this court must not consider the strength of the evidence in ruling on a motion in limine. This is not the type of evidence the mere mention of which may prejudice a jury. In this instance, the proper time to rule upon admissibility of such evidence is at trial. This court declines the plaintiffs' invitation to do so now. The motion in limine will be denied.

4. Both sides have submitted motions for summary judgment on specified issues. In *Hogan v. Garden County*, 264 Neb. 115, 646 N.W.2d 257 (2002), the Nebraska Supreme Court restated the familiar principles applicable to motions for summary judgment:

a. Summary judgment is proper when the pleadings, depositions, admissions, stipulations, and affidavits in the record disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.

b. In considering a summary judgment motion, the court views the evidence in a light most favorable to the nonmoving party and gives such party the benefit of all reasonable inferences deducible from the evidence.

c. On a motion for summary judgment, the question is not how a factual issue is to be decided, but whether any real issue of material fact exists.

d. The party moving for summary judgment has the burden to show that no genuine issue of material fact exists and must produce sufficient evidence to demonstrate that the moving party is entitled to judgment as a matter of law.

e. A prima facie case for summary judgment is shown by producing enough evidence to demonstrate that the movant is entitled to a judgment in its favor if the evidence were uncontroverted at trial.

f. After the moving party makes a prima facie case for summary judgment, the burden to produce evidence showing the existence of a material issue of fact that prevents judgment as a matter of law shifts to the party opposing the motion.

5. Regarding the plaintiffs' motion, viewed in the light most favorable to the defendants, a genuine issue exists as to a material fact or facts or as to the ultimate inferences that may be drawn from those facts. This court must not weigh the evidence or consider which party the court considers more likely to prevail at trial. This court must, at this stage, merely determine whether a genuine issue of fact exists, and not how such factual issues should be determined. A mere inference favorable to the nonmoving party is sufficient to defeat a summary judgment motion. As the Supreme Court observed in *McLain v. Ortmeier*, 259 Neb. 750, 612 N.W.2d 217 (2000), the overruling of a motion for summary judgment does not decide any issue of fact or proposition of law affecting the subject matter of the litigation, but merely indicates that the court was not convinced by the record that there was not a genuine issue as to any material fact or that the party offering the motion was entitled to a judgment as a matter of law. That situation applies here. The plaintiffs' motion must be denied.

6. Regarding the defendants' motion, viewed in the light most favorable to the plaintiffs, a genuine issue exists as to a material fact or facts or as to the ultimate inferences that may be drawn from those facts. The defendants' motion must also be denied.

ORDER: IT IS THEREFORE ORDERED that:

1. The plaintiffs' motion in limine is denied.
2. The plaintiffs' motion for summary judgment is denied.
3. The defendants' motion for summary judgment is denied.
4. The final pretrial conference is rescheduled for **Friday, February 7, 2003**, at **1:40 p.m.**, or as soon thereafter as the same may be heard. The pretrial conference will be held in the District Judge's chambers, Cherry County Courthouse, Valentine, Nebraska. All other provisions of the prior progression order(s) remain fully effective.

5. For the assistance of counsel, the court advises that the scheduling at 1:40 p.m. means that this case is the third case scheduled for pretrial conference on that afternoon and that if both prior cases actually proceed to pretrial on that date the actual pretrial conference time may be considerably later. The court further observes that this conference was scheduled on relatively short notice without conferring with counsel regarding scheduling conflicts and that the court will be receptive to reasonable accommodations to scheduling conflicts.

Signed in chambers at **Ainsworth**, Nebraska, on **January 15, 2003**;
DEEMED ENTERED upon file stamp date by court clerk.

BY THE COURT:

If checked, the court clerk shall:

- ☒ Mail a copy of this order to all counsel of record and any pro se parties.
Done on _____, 20____ by _____.
- ☒ Note the decision on the trial docket as: [date of filing] **Signed "Order on Motions"**
entered; pretrial conference scheduled for [date and time from order].
Done on _____, 20____ by _____.

William B. Cassel
District Judge

Mailed to: